

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,836	<b>Applicant(s)</b> SAKAI ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-7 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-7 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>9/14/09</u> .                            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                          |



### DETAILED ACTION

Receipt is acknowledged of amendment and remarks and terminal disclaimer dated 9/14/09 and amendment and remarks dated 9/22/09.

### Status of claims

**Claims 2-4, 8-19 and 21 are cancelled.** Claims 1, 5-7 and 20 are examined in the application.

### *Claim Rejections - 35 USC § 103*

Claims 1, 5-6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 5,683,685 ('685) and 6,685, 953 ('953).

Patent '685 t at col.7, 11 15-21 teaches that the surfactant can be used singly or combination of two or more and the weight percent disclosed in the patent is within the weight percent claimed in the instant application. Patent '685 at col.5, 11 8- 43 teaches claimed anionic surfactant and this includes claimed polyoxyalkylene alkyl ether sulfates and alkyl sulfates. Patent '685 teaches claimed lactic acid, glycolic acid and salts at col.11, 11 56-63 and the weight percent at paragraph bridging cols. 11-12. The weight percent claimed is within the weight percent taught by patent. Patent at col.11, 11 48-55 teaches claimed pH range. Patent at col. 7, line 22 through col. 11, line 40 teaches conditioning agent and this includes claimed oils, silicones and cationic polymers. Patent at col. 11, 11 40-46 teaches weight percent of polymers and this includes claimed silicones cationic polymers. Patent at col.8, 11 22-68 describes cationic polymers and this includes claimed cationic polymers. See also examples. All the examples teach adjusting the pH level of the compositions. All the examples teach nonionic surfactants. Patent at col.7 teaches oils, fatty alcohols. These substances are moisturizers. **Moisturizers** are complex

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mixtures of chemical agents specially designed to make the external layers of the skin (epidermis) softer and more pliable, by increasing its hydration ( water content) by reducing evaporation. The difference between the patent and the instant application is patent does not teach the claimed ingredient 1.

However patent '953 teaches claimed ingredient . In patent '953, see the abstract, and see col.2, ll 129 for the claimed diamide and see col.s 3-6 for species. Patent '953 at col.7, ll 4-9 teaches that the diamide derivatives are useful in improving the water retention capacity and barrier function of horny layer. Patent at col.8, ll 1-5 teaches using the diamide in hair cosmetic applications and using in the form of shampoo, Conditioner etc. Patent at col.8, ll 6-30 teaches adding anionic surfactants , amphoteric surfactant and non-ionic surfactants and also oils.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare the compositions of patent '685 using anionic surfactant, organic acid, cationic polymers and add the diamide compound since patent '685 teaches adding oils (moisturizers) and patent '953 teaches the diamide compound to be useful for improving the water retention (moisturizing property). One of ordinary skill in the art would be motivated to diamide compound of patent '953 into the compositions of '685 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers and silicone derivatives provide conditioning property to the hair and adding surfactant provide cleansing actions. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. It is beneficial to the consumer having single product that provides cleansing, conditioning and moisturizing property to hair. This is a prima facie case of obviousness.

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Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 5,683,685 ('685) and 6,685, 953 ('953) as applied to claims 1, 5-6 and 20 above, and further in view of U. S. Patent 4,835, 148 ('148)

Patent '685 teaches non-ionic surfactant but does not teach the claimed cocoylmonoethanolamide. However patent '148 teaches shampoo compositions and teaches as an essential component surfactant and this includes non-ionic surfactant and teaches under examples III-IV coco amide MEA which is same as claimed surfactant of claim 7.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare the compositions of patent '685 using anionic surfactant, organic acid, cationic polymers and add the diamide compound since patent '685 teaches adding oils (moisturizers) and patent '953 teaches the diamide compound to be useful for improving the water retention (moisturizing property) and substitute the non-ionic surfactant used in examples of patent '685 with another functional equivalent. One of ordinary skill in the art would be motivated to diamide compound of patent '953 into the compositions of '685 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers and silicone derivatives provide conditioning property to the hair and adding surfactant provide cleansing actions. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. It is beneficial to the consumer having single product that provides cleansing, conditioning and moisturizing property to hair. This is a prima facie case of obviousness.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619